

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Anthony Cennamo	Team: Squad #5	CCRB Case #: 201600455	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 08/20/2015 2:30 PM	Location of Incident: Forest Avenue and Marianne Street	Precinct: 121	18 Mo. SOL 2/20/2017	EO SOL 2/20/2017	
Date/Time CV Reported Wed, 01/20/2016 1:39 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 01/20/2016 1:39 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Vincent Agostino	25992	945355	NARCBSI
2. SGT Paul Farella	02557	926935	NARCBSI
3. DT3 Mathew Reich	00122	933211	NARCBSI

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Clyde Moyer	4072	946038	NARCBSI
2. DT3 Steven Sposito	05103	926161	NARCBSI

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Mathew Reich	Abuse: Detective Mathew Reich stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.POM Vincent Agostino	Abuse: Police Officer Vincent Agostino stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
C.SGT Paul Farella	Abuse: Sergeant Paul Farella stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
D.POM Vincent Agostino	Abuse: Police Officer Vincent Agostino frisked § 87(2)(b)	
E.POM Vincent Agostino	Abuse: Police Officer Vincent Agostino searched § 87(2)(b)	
F.DT3 Mathew Reich	Abuse: Detective Mathew Reich frisked § 87(2)(b)	
G.POM Vincent Agostino	Abuse: Police Officer Vincent Agostino searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
H.DT3 Mathew Reich	Abuse: Detective Mathew Reich searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	

Case Summary

§ 87(2)(b) filed this complaint with the CCRB via phone on January 20, 2016. On August 20, 2015, at approximately 2:30 p.m., § 87(2)(b) was a passenger in a car being driven by § 87(2)(b). They parked in a Chase bank parking lot on Forest Avenue and Marianne Street in Staten Island when § 87(2)(b) noticed an unmarked black Toyota Camry in the parking lot. § 87(2)(b) exited the car to withdraw money from the Chase ATM's and was gone for five minutes before he got back into the car, exited the parking lot and drove for a couple of seconds before being stopped by that same vehicle (**Allegations A, B and C**). § 87(2)(b) was asked to step out of the vehicle by PO Vincent Agostino of Narcotics Borough Staten Island, who frisked him (**Allegation D**) and searched his pants pockets, as well as removed his shoes and hat (**Allegation E**). § 87(2)(b) observed Det. Matthew Reich, also with Narcotics Borough Staten Island, frisk § 87(2)(b) at the back end of the vehicle simultaneously (**Allegation F**). Shortly after, a prisoner van arrived with Det. Steven Sposito and Det. Clyde Moyer, both of Narcotics Borough Staten Island. At that point, PO Agostino and Det. Reich searched the vehicle and recovered a marijuana cigarette containing Phencyclidine (**Allegations G and H**). The search lasted approximately 15 minutes and § 87(2)(b) and § 87(2)(b) were then placed in handcuffs and taken to the 121st Precinct. § 87(2)(b) was not summonsed as a result of this incident.

Mediation, Civil and Criminal Histories

§ 87(2)(b) rejected mediation because he did not want to see the officers again. On March 22, 2016, a notice of claim request was submitted and results are pending. § 87(2)(b) does not have a criminal conviction history, as evident by a search of the Office of Court Administration database.

Civilian and Officer CCRB Histories

§ 87(2)(b)

PO Agostino has been a member of the NYPD for eight years and has been the subject of four prior CCRB complaints involving eight allegations. There is no pattern in regard to these allegations and no allegations were substantiated against him. § 87(2)(g), § 87(4-b)

Det. Reich has been a member of the NYPD for 12 years and has been the subject of 28 prior CCRB complaints involving 71 allegations. There is one other open complaint for Det. Reich, Case number 201600158. § 87(2)(g)

§ 87(2)(b) 12 allegations made regarding Vehicle Searches and five allegations made regarding Vehicle Stops. One Vehicle Stop allegation was substantiated for Case number 201410419 and there are no substantiated allegations involving Vehicle Searches. Det. Reich was substantiated on five other allegations unrelated to vehicle stops and searches.

Sgt. Farella has been a member of the NYPD for 15 years and has been the subject of four prior CCRB complaints involving nine allegations. § 87(2)(g)

Potential Issues

§ 87(2)(b) provided a description of the officer that frisked and searched him, a 5'5" tall white male officer with dark eyes, which was consistent with the pedigree information of Det. Reich. § 87(2)(b) described the officer that frisked § 87(2)(b) as a taller officer, 6'2" in height with light blue eyes, which is consistent with pedigree information of PO Agostino. During

the officer interviews, it was a general consensus of acknowledgement that PO Agostino in fact interacted with § 87(2)(b) while Det. Reich interacted with § 87(2)(b). § 87(2)(b) was contacted via phone on February 16, 2016, but did not want to provide a statement or participate in the investigation in any way. § 87(2)(b) explained that he does not live in New York State, and did not provide another address.

Findings and Recommendations

Allegation A –Abuse of Authority: Police Officer Vincent Agostino stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation B –Abuse of Authority: Detective Matthew Reich stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation C –Abuse of Authority: Sergeant Paul Farella stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

According to § 87(2)(b) he and § 87(2)(b) pulled into a Chase bank parking lot on Forest Avenue so § 87(2)(b) could obtain money. § 87(2)(b) went to an ATM and was gone for five minutes before he got back into the driver seat of his vehicle. § 87(2)(b) did not see § 87(2)(b) interact with any other person when he exited the vehicle, entered Chase, and returned to the vehicle. § 87(2)(b) noticed that an unmarked black Toyota Camry pulled into the parking lot and waited behind them close by. When § 87(2)(b) drove the vehicle out of the parking lot, they were followed by the black Toyota Camry and almost immediately pulled over upon exiting the lot. § 87(2)(b) stopped the car and PO Agostino and Det. Reich approached the vehicle.

PO Agostino stated that he sat in the front passenger seat of the unmarked black Toyota Camry that stopped § 87(2)(b) and § 87(2)(b). PO Agostino stated the car that he was inside of was parked on the sidewalk adjacent to the Chase Bank parking lot, positioned 15 feet away from the SUV that § 87(2)(b) and § 87(2)(b) occupied. PO Agostino, who was in the front passenger seat, could see directly into their windshield, which was not tinted, and saw § 87(2)(b) hand a light colored object slightly larger than a human hand to § 87(2)(b). § 87(2)(b) reached down to place that object on the floor, but PO Agostino could not see where it was placed. This act raised PO Agostino's suspicion that drugs may have been involved and wanted to stop them to inquire more about the object in question. It is undisputed that PO Agostino relayed his observation to Det. Reich and Sgt. Farella. PO Agostino stated that he told Det. Reich and Sgt. Farella that he observed § 87(2)(b) hand an object to § 87(2)(b) and wanted to stop § 87(2)(b) and § 87(2)(b) to investigate further.

Sgt. Farella provided a statement that was consistent with PO Agostino, with slight variation. According to Sgt. Farella, there was a consensus in the vehicle that the officers believed the object that PO Agostino observed may have been a narcotic transaction and did not order the stop himself. Sgt. Farella did not observe the object in question that § 87(2)(b) handed to § 87(2)(b). Det. Reich stated that he did not recall any conversation that he participated in after PO Agostino made the observation concerning the hand to hand transaction of the unidentified object. Det. Reich operated the vehicle that stopped § 87(2)(b) and § 87(2)(b) but did not recall who made the decision ultimately to authorize the stop of § 87(2)(b) and § 87(2)(b)'s vehicle.

The police may stop a vehicle when they have reasonable suspicion of criminal activity as stated in People v. Ulerio, 781 N.Y.2d 627 (2003).

PO Agostino described the object as a light colored object slightly larger than a human hand. PO Agostino could not relate any attributes of the object to narcotics and admitted that he did not know what the object could have been before he stopped their vehicle. Sgt. Farella and Det. Reich did not observe the object that PO Agostino observed, and PO Agostino stated he wanted to stop the vehicle to inquire if the object in question was in fact drugs. Sgt. Farella stated that the decision to stop the vehicle was a consensus and Det. Reich did not recall the specific circumstances surrounding the vehicle stop. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation D – Abuse of Authority: Police Officer Vincent Agostino frisked § 87(2)(b)

Allegation E – Abuse of Authority: Police Officer Vincent Agostino searched § 87(2)(b)

Allegation F – Abuse of Authority: Detective Matthew Reich frisked § 87(2)(b)

According to § 87(2)(b) when he and § 87(2)(b) were stopped, the officers opened their doors and pulled them out of the vehicle by their arms and did not explain why they were being stopped. The officers also did not ask for any identification. § 87(2)(b) stepped out of the vehicle and PO Agostino immediately frisked § 87(2)(b) wore a white t-shirt with a baseball cap and white sneakers, but did not recall what type of pants he wore. PO Agostino began to frisk § 87(2)(b)'s chest, both arms and then moved down to his legs. PO Agostino patted down the outside of § 87(2)(b)'s pants, then went inside his all of his pants pockets and searched them. § 87(2)(b) alleged that PO Agostino lifted up his hat and took off his shoes on the scene. § 87(2)(b) was also pulled out of the driver's side by Det. Reich. § 87(2)(b) could not see the entire interaction that occurred between § 87(2)(b) and Det. Reich, but stated that at one point he saw Det. Reich take § 87(2)(b) toward the trunk of the vehicle and pat him down.

PO Agostino provided his statement with the following differences. Upon exiting his vehicle to approach § 87(2)(b) who sat on the passenger side, § 87(2)(b) opened his passenger side window. PO Agostino smelled a strong odor of Phencyclidine, which he described as a distinct scent of nail polish remover, emanating from the vehicle. When PO Agostino approached the passenger side window and could see § 87(2)(b) PO Agostino observed an object on the passenger side floor. PO Agostino identified this as the object that he witnessed § 87(2)(b) hand to § 87(2)(b) who placed the object down on § 87(2)(b)'s passenger side floor. PO Agostino could clearly observe a white rubber glove wrapped around a marijuana cigarette with a dark brown residue smeared on the glove. PO Agostino indicated this was evident of Phencyclidine and had made prior arrests for similar narcotics. PO Agostino asked § 87(2)(b) a few questions, which he did not recall, but distinctly recalled § 87(2)(b) stated "We smoke weed together", in reference to § 87(2)(b) PO Agostino told § 87(2)(b) he was under arrest and to step out of the car, which he did without incident. PO Agostino put handcuffs on § 87(2)(b) and then proceeded to frisk and search him. PO Agostino stated that § 87(2)(b)'s shoes were removed at the 121st Precinct before being put into a cell so his laces could be removed, but he did not remove his shoes at the scene. PO Agostino did not recall if § 87(2)(b) wore a hat.

Det. Reich corroborated PO Agostino's observation that a strong smell of nail polish remover was present when he approached the vehicle on the driver's side. This smell is consistent with Phencyclidine in Det. Reich's 12 year tenure as an officer. Det. Reich did not recall what PO

Agostino visually observed, but recalled placing § 87(2)(b) and § 87(2)(b) under arrest almost immediately after they were stopped. Det. Reich frisked and searched § 87(2)(b) after he and § 87(2)(b) were placed under arrest for possession of a narcotic substance. Det. Reich stated that § 87(2)(b) was not frisked or searched at any moment prior to being placed under arrest. Sgt. Farella also stated that he could smell Phencyclidine, and recalled that PO Agostino observed a marijuana cigarette on the floor of the front passenger seat. Sgt. Farella explained that Port Richmond, the area in which Forest Avenue and Marianne Street resides, is well known for narcotics, specifically transactions that occur in parking lots.

According to People v. Ulerio, 781 N.Y.2d 627 (2003), the police may stop an automobile and frisk its occupants when they have reasonable suspicion of criminal activity. According to People v. Johnson, 901 N.Y.2d 909 (2009), the smell of marijuana alone is sufficient to provide police who are trained and experienced in the use of marijuana with probable cause to search a vehicle and its occupants.

§ 87(2)(b), § 87(2)(g)

Allegation G – Abuse of Authority: Police Officer Vincent Agostino searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation H – Abuse of Authority: Detective Matthew Reich searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

According to § 87(2)(b) after he and § 87(2)(b) were frisked and searched, PO Agostino and Det. Reich searched the inside of the vehicle. Either PO Agostino or Det. Reich opened up the glove compartment and reached into it with their hands. They both opened and placed their hands into the center console located between the two front seats of the car and also searched the backseat, but could not remember what parts. Approximately two minutes into the search, § 87(2)(b) stated that a marijuana cigarette was found, but § 87(2)(b) could not recall which part of the vehicle it was found. § 87(2)(b) alleged that one of the officers opened the trunk of his car but did not place their hands inside. § 87(2)(b) could not recall if it was Det. Reich or PO Agostino who did so.

PO Agostino stated that he searched the car after he placed § 87(2)(b) in handcuffs when he saw that he was in possession of a marijuana cigarette that smelled like Phencyclidine. PO Agostino immediately recovered the white rubber glove with Phencyclidine before he searched any other portion of the vehicle. PO Agostino then searched the center console of the car and the backseats, but denied ever having searched the glove compartment or the trunk. PO Agostino said that the glove compartment would have been searched at the 121st Precinct, after the vehicle was vouchered. Det. Reich performed a secondary search, which is a search that occurs immediately after an officer searches a vehicle to ensure that nothing was missed. Det. Reich did not recall what areas of the vehicle he searched, but denied having opened the trunk of the car. Sgt. Farella stated that after § 87(2)(b) and § 87(2)(b) were brought to the back of the vehicle in handcuffs, he stood with them near the trunk of the car. Sgt. Farella stated that no one could have opened the trunk since § 87(2)(b) and § 87(2)(b) stood directly in front of it. PO Agostino,

Det. Reich and Sgt. Farella did not see any officer open the trunk at any point. Det. Sposito stated that he and his partner arrived on the scene after § 87(2)(b) and § 87(2)(b) were arrested and did not see any officer search the car. Det. Sposito only arrived to place them in the prisoner van to transport them to the 121st Precinct and immediately left the scene.

According to People v. Johnson, 901 N.Y.2d 909 (2009), the smell of marijuana alone is sufficient to provide police who are trained and experienced in the use of marijuana with probable cause to search anywhere in a vehicle and its occupants. People v. Galak, 81 N.Y.2d 463 (1993) states the automobile exception authorizes officers to search a vehicle without a warrant if there is probable cause that evidence or contraband is inside of the vehicle.

§ 87(2)(b), § 87(2)(g)

Squad:

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date